IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 54387-M of 2005

DATE OF DECISION : 22.03.2007

Hira Lal alias Bawa Ram

.... PETITIONER

Versus

State of Punjab and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Ms. Jyoti Sareen, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

Petitioner Hira Lal alias Bawa Ram has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for quashing of the cross-case qua him in FIR No. 33 dated 20.5.1994 under Sections 323/324/326/148/149 IPC, registered at Police Station Banga, District Jalandhar, and order dated 13.7.1998, passed by the trial court, whereby he and Mukhtiar Singh was summoned under Section 319 of the Code as additional accused to face trial along with other accused and the subsequent proceedings.

2. In this case, FIR No. 33 dated 20.5.1994 was registered under Sections 323/324/148/149 IPC at Police Station Banga, District Jalandhar, on the complaint made by one Jaswinder Singh against Stephen, Nachhattar Singh, Gurnam Singh and Chhinder Pal. Regarding the same occurrence, a cross case was also got registered by Chhinder Pal and Harjinder Kaur under Sections 323/324/326/148/149 IPC against Harpal Singh, Jaswinder Singh, Satya, Charanjit Kaur, Mukhtiar Singh and the present petitioner. After investigation in the cross case, challan was presented against Harpal Singh, Jaswinder Singh, Satya and Charanjit Kaur for the aforesaid

offences. However, Mukhtiar Singh and the present petitioner were found innocent and kept in column No.2. Thereafter, charge was framed against the aforesaid four accused only under Sections 323, 324 read with Section 34 IPC.

3. After examination-in-chief of the complainant Chhinder Pal as PW.1 and Harjinder Kaur, an eye witness, as PW.2, an application under Section 319 of the Code for summoning Mukhtiar Singh and the petitioner as additional accused was filed by the prosecution, which was allowed by the trial court vide order dated 13.7.1998.

4. It is the case of the petitioner that before passing of the aforesaid summoning order, he had gone abroad in the year 1997, therefore, the summoning order could not be served upon him. In support of this averment, the petitioner has placed on record true copy of passport showing the relevant entries of his departure and arrival to foreign country. It is further case of the petitioner that without any effort to serve the summons on him in the country of his residence i.e. Greece, he was declared proclaimed offender vide order dated 25.3.2000, passed by the trial court in utter violation of Section 82 of the Code.

5. Subsequently, the remaining accused, including Mukhtiar Singh, who was also summoned as additional accused along with the petitioner, were tried. The prosecution led its evidence. When Chhinder Pal (PW.1) and Harjinder Kaur (PW.2), who were complainant and eye witness, appeared for their cross examination in the year 2000, they did not support the prosecution version at all. They categorically stated that none of the accused persons, named in the cross-case, caused any injury to them and the injuries to them were caused by some unknown persons. In the light of statements of these two eye witnesses, the trial court, vide its judgment dated 11.5.2000 acquitted all the accused, except the petitioner, who had already been declared as proclaimed offender.

6. It is the case of the petitioner that in the year 2005, when he came back to India, he came to know about the aforesaid criminal

proceedings pending against him. In that situation, he filed the instant petition.

7. I have heard the arguments of learned counsel for the parties.

8. It is admitted fact that the petitioner was named as an accused in the cross case, which was registered on the statement of Chhinder Pal, who was accused in the main case. During investigation of the said case, the petitioner and Mukhtiar Singh were found innocent and kept in column No.2 and the challan was filed against their co-accused under Sections 323/ 324/326/148/149 IPC. It is also admitted fact that against the four accused, the charge was framed only under Sections 323/324 read with Section 34 IPC. Subsequently, after examination-in-chief of PW.1 Chhinder Pal and PW.2 Harjinder Kaur, the complainant and eye witness, who had stated that petitioner and Mukhtiar Singh gave a datar blow and kirpan blow on the head and right leg of the complainant, both these persons, who were kept in column No.2, were summoned as additional accused, vide order dated 13.7.1998, copy of which is annexed with the petition as Annexure P-2. It is also not denied that the petitioner had gone abroad in the year 1997 and thereafter, he came back to India in the year 2005. It is also undisputed that when the aforesaid two witnesses i.e. PW.1 Chhinder Pal and PW.2 Harjinder Kaur appeared for cross-examination in the year 2000, they did not support the prosecution version at all. They were declared hostile and cross examined by the Public Prosecutor. Copies of statements of both these witnesses have also been annexed with the petition. After examination of these two material witnesses, the prosecution closed its evidence and thereafter, vide judgment dated 11.5.2000, the trial court while holding that the prosecution has failed to prove charge against the accused, acquitted all the five accused, who were facing trial, including Mukhtiar Singh, who was also summoned as additional accused along with the petitioner. Copy of the judgment has also been annexed with the petition as Annexure P-7.

9. After hearing counsel for the parties and perusing the aforesaid documents, in my opinion, without going into the issue whether the

petitioner was legally declared proclaimed offender or not, the continuation of the criminal proceedings against the petitioner in the cross case will serve no useful purpose and it will be a futile exercise. Therefore, in the interest of justice, these proceedings are liable to be quashed.

10. In the cross case, though allegations were levelled against the petitioner, but during the police investigation, he was found innocent. Subsequently, he was summoned under Section 319 of the Code only on the basis of examination in chief of two witnesses, namely PW.1 Chhinder Pal and PW.2 Harjinder Kaur, the alleged eye witnesses. This was the only evidence against the petitioner. However, in cross-examination, both these witnesses did not support the prosecution case at all against any of the accused. They were declared hostile and cross-examined by the prosecution. Thereafter, the prosecution did not lead further evidence. In that situation, my opinion, the only evidence, which was against the petitioner at the time of his summoning under Section 319 of the Code, was completely washed out by the subsequent statements of those witnesses in the cross examination. Thereafter, no evidence remained against the petitioner. All the five accused, who faced trial, including Mukhtiar Singh, who was also summoned under Section 319 of the Code as additional accused along with the petitioner, have already been acquitted by the trial court, as the prosecution has failed to establish the charge. In view of these facts and circumstances of the case, I am of the opinion that it will not be in the interest of justice to ask the petitioner to face trial, as it will be a futile exercise.

11. In view of the above, in the interest of justice, the summoning order dated 13.7.1998 (Annexure P-2) and the subsequent proceedings, including the order dated 25.3.2000 (Annexure P-4), whereby the petitioner was declared proclaimed offender, are hereby set aside.

12. The petition is, accordingly, allowed.

March 22, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**